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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 4

PETER VAN DER WEYDE, PETITIONER,

vs.

OCEAN TRANSPORT COMPANY, LTD., A CORPORATION, CLAIMANT OF THE STEAMSHIP "TAIGEN MARU", ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 19, 1935.

CERTIORARI GRANTED NOVEMBER 18, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 720

PETER VAN DER WEYDE, PETITIONER,

vs.

OCEAN TRANSPORT COMPANY, LTD., A CORPORATION, CLAIMANT OF THE STEAMSHIP "TAIGEN MARU", ETC., ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION

DOCKET ENTRIES

Apr. 18, 1931.—Libel filed and Monition issued.
Apr. 20, 1931.—U. S. Marshal's return on Monition filed.
Apr. 25, 1931.—Claim of Ocean Transport Co., Ltd., filed.
Apr. 25, 31.—Release bond filed and Notice of Bonding issued.
Dec. 12, 1932.—Intervention by Norwegian Consul and his Exceptive Allegations filed.
Dec. 23, 1923.—Hearing on exceptive allegations of Intervenor had and the Court sustains the Intervenor, and declines to entertain jurisdiction.
Jan. 28, 1933.—Order of Dismissal signed and allowing costs to Claimant and Intervenor.
Feb. 7, 1933.—Cost bill of Claimant and Intervenor (amount $342.05) filed.
Apr. 11, 1933.—Order Court allowing costs as filed.
Apr. 21, 1933.—Libelant files notice of appeal and assignment of errors.
Apr. 29, 1933.—Libelant files motion to prosecute appeal without filing bond. Hearing had and matter taken under advisement.

[fol. 3] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION

PETER VAN DER WEYDE, Libelant,

vs.

THE STEAMSHIP "TAIGEN MARU", Her Tackle, Apparel, Engines, Boilers and Furniture, Respondent

LIBEL IN REM—Filed April 18, 1931

To the Honorable Edward E. Cushman, Judge of the District Court of the United States for the Western District of Washington, Northern Division, in Admiralty Sitting:

The libel and complaint of Peter Van Der Weyde, an ordinary seaman, of Portland, Oregon, against the Steamship Taigen Maru, her tackle, apparel, engines, boilers and furniture, in a cause of tort and damages for personal injuries, civil and martime, alleges as follows:

Article I. That during all the times herein mentioned the Steamship "Taigen Maru" was formerly the "Luise Nielsen", and was and is an ocean-going vessel engaged in commerce and the transportation of freight between the Ports of Portland and the Columbia River and the Orient; and on or about the 16th day of May, 1922, said steamship was on the high seas in pursuance of a voyage transporting freight and ballast on a return voyage from the Orient to the Port of Portland, and was about six days out from Astoria, Oregon.

[fol. 4] Article II. That on or about the 17th day of March, 1922, in the city of Portland, Oregon, libelant was employed by the first mate of said steamship as an ordinary seaman on said steamship, for a voyage between the Port of Astoria, Oregon, and the Orient, and return, and in pursuance of said employment, libelant went aboard said steamship and entered upon the performance of his duties as such ordinary seaman.

Article III. That during the course of said return voyage of said vessel, libelant and certain other members of the crew of said vessel were directed to work at chipping off rust from the between-decks on the after part of said vessel; that during the times libelant went to work scraping and chipping rush from the aforesaid deck, he entered the between-decks through the main hatch; that the covers on the between-deck hatches were on, except the hatch on the main deck of said vessel, which had been left open for the purpose of giving light while libelant was so engaged in his work; that said between-decks is dark when the hatch covers on the maindeck are on, unless artificial light is used; that the hatch covers on the between-deck hatch going into the lower hold had been on, as is customary while vessels are at sea; that libelant worked for several days at said work under the direction of the third mate of said vessel, who also acted as boatswain on said vessel; that the food and rations furnished the sailors on said vessel were of an inferior quality, and libelant was sick and ill

on the 16th day of May, 1922, and had been sick and ill for several days prior thereto, and was not able to work in the between-decks aft, and had been at work cleaning up the mess room and quarters.

Article IV. That on the night of the 15th day of May, 1922, the first mate of said vessel informed libelant that he was well enough to go to work chipping off the rust for- [fol. 5] ward with other members of the crew, and on the morning of the 16th day of May, 1922, the third mate in the mess room gave libelant certain tools to work with and directed libelant to accompany him, along with other members of the crew, where he would place libelant to work chipping off rust; that said mate did not inform libelant where he was going to work, but took libelant forward on said vessel, the sailors' mess room being aft in the poop deck of said vessel; that said third mate thereupon descended hatch number two; that one or two of the hatch coverings on said hatch were off; that said between-decks and the hatch thereof were full of coal and the said mate and libelant crawled down said coal until they reached the between-decks, said mate leading the way and libellant following; that when libelant arrived at the between-decks he proceeded to walk aft, and as libelant was walking he walked into the hatch, and fell for a distance of approximately twenty feet into the lower hold.

Article V. That libelant did not know that said hatch was open, and if the hatch covers had been removed and said hatch left open, the same should have been guarded with lifelines; that it is not customary, while vessels are at sea, for the hatch covers to be off of a hatch, and in event hatch covers are removed for any cause, said opening is guarded by a life line being placed around the same, and a light is placed in a position so that it can be seen that said hatch is open, and the crew, when directed to go into the between-decks, are informed that the hatch is open, because there is great danger that in event the hatch is left open, a person will walk into the same while walking in the between-decks.

Article VI. That there were no lights in said between-decks and the same was so dark that libelant could not see where he was walking, and it was negligent and careless [fol. 6] not to provide lights with which to see, and to warn

and advise libelant that said hatch had been left open; likewise, it was negligent and careless to leave said hatch open without a life line around the same and a light over the same, and by reason of said negligence, libelant fell through said hatch, thereby causing an impacted fracture of the head of the right femur, and a fracture of the middle third of the right femur, and injuries to libelant's head and body, thereby permanently crippling and maiming libelant, all to libelant's damage in the sum of Ten Thousand ($10,000.00).

Article VII. That libelant's address is 235 E. 55th Street, Portland, Oregon.

Article VIII. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

For the second cause of suit, libelant propounds as follows:

Article I. Libelant reiterates all of the allegations contained in Articles I to VIII, inclusive, except the averment regarding damages contained in Article VI, as if the same were impleaded therein.

Article II. That by reason of the premises libelant was disabled from performing any work or labor for a long period of time, and the reasonable value of the wages and maintenance which libelant would be entitled to be paid by reason of the premises is in the sum of Three Thousand Five Hundred Dollars ($3,500.00).

Wherefore, libelant prays that process of attachment in due form of law, according to the due course of this Honor-[fol. 7] able Court, in causes of maritime jurisdiction, may issue against the Steamship "Taigen Maru", her tackle, apparel, engines, boilers and furniture, and that her master and all other persons having, or pretending to have, any right, title or interest therein may be cited to appear and answer all matters herein set forth, and that a monition may issue directed to said steamship, directing said respondent to answer the allegations propounded in this libel and complaint, and that this Honorable Court will be pleased to pronounce and decree for damages in the said sum of Ten Thousand Dollars ($10,000.00) and the further sum of Three Thousand Five Hundred Dollars ($3,500.00) on libelant's second cause of suit, together with the costs

of this proceeding, against said steamship "Taigen Maru", her tackle, apparel, engines, boilers and furniture, and against the surety upon any claimant's bond, and for such other relief to the libelant as to law and justice appertain, and also to condemn said steamship, her engines, apparel, boilers, tackle and furniture to be sold to pay the same.

Peter Von der Weyde, Libelant.

Lord & Moulton,
Proctors for Libelant.

[fol. 8] *Duly sworn to by Peter Van Der Weyde. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 9] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLAIM OF OWNERSHIP—Filed April 25, 1931

To the Honorable Judge of the Above Entitled Court:

Ocean Transport Co. Ltd. (Taiyo Kaiun Kabushiki Kaisha, a Japanese corporation) as owner of the above named respondent steamship "Taigen Maru", her engines, boilers, machinery, tackle, apparel and furniture, intervening for its interest as such owner, appears by and through R. Konno, its agent, and claims said steamship, her engines, boilers, machinery, tackle, apparel and furniture, and prays that it be permitted to defend accordingly, and that the above entitled court decree restitution to it of said steamship, and other wise administer right and justice in the premises.

Ocean Transport Co. Ltd., a corporation, (Taiyo Kaiun Kabushiki Kaisha) , by R. Konno, As its Agent.

[fol. 10] UNITED STATES OF AMERICA,
State of Washington, County of King, ss:

R. Konno, being first duly sworn, upon oath deposes and says:

That he is the agent and attorney-in-fact of and for Ocean Transport Co. Ltd. (Taiyo Kaiun Kabushiki Kaisha), the

claimant above named in the foregoing claim of the respondent steamship "Taigen Maru", and makes said claim and this affidavit in support thereof, for and on its behalf, being thereunto duly authorized.

That said Ocean Transport Co. Ltd. (Taiyo Kaiun Kabushiki Kaisha), a Japanese corporation, is, and at the time of the attachment of said respondent steamship in the above entitled action was the true and bona fide chartered owner of said steamship, her engines, boilers, machinery, tackle, apparel and furniture, and as such now is and at said time was solely entitled to the possession thereof.

R. Konno.

Subscribed and sworn to before me this 22 day of April, 1931.

Lane Summers, Notary Public in and for the State of Washington, residing at Seattle. (Seal.)

[File endorsement omitted.]

[fols. 11 & 12] Cost bond for $250.00 approved and filed April 25, 1931 omitted in printing.

[fols. 13-15] Release bond for $13,500 approved and filed April 25, 1931 omitted in printing.

[fol. 16] In United States District Court

[Title omitted]

Affidavit of Lane Summers—Filed April 25, 1931

United States of America,
State of Washington,
County of King, ss:

Lane Summers being first duly sworn on oath, deposes and says:

That he is one of the attorneys of record for claimant Ocean Transport Co., Ltd.; that he makes this affidavit in connection with application to release the respondent Steamship "Taigen Maru."

That upon April 22, by long distance telephone Mr. Lord of the law firm of Lord & Moulton, Portland, Oregon, proc-

tors for libelant, orally stipulated that release bond in the sum of Thirteen thousand five hundred dollars ($13,500.00) would be adequate and acceptable; that in confirmation of such agreement Mr. Lord caused to be sent to affiants firm telegram, true copy of which is as follows:

"Portland, Ore. 22, 1931, Apr. 22, AM 10:34.

[fol. 17] Lane Summers, Care Hayden, Merritt, Summers & Bucey—Central Building, Seattle, Wash.

We approve bond in sum of Thirteen thousand five hundred dollars Van Der Weyde against Taigen Maru we have no objection form of bond or to sureties Judge Cushman may approve bond tendered by you in this case without further notice to us.

Lord & Moulton," Lane Summers.

Subscribed and sworn to before me this 22 day of April, 1931.

F. S. Merritt, Notary Public in and for the State of Washington, residing at Seattle. (Seal.)

[File endorsement omitted.]

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR INTERVENTION BY NORWEGIAN CONSUL

Comes now C. Stang Anderson, Acting Consul of the Kingdom of Norway, resident at Seattle, and petitions for an order of court granting leave to intervene in the above entitled cause, for the purpose of filing exceptions and exceptive allegations directed to the libel in said cause. This petition is based upon the record in the above entitled cause, together with petitioner's verified exceptions and exceptive allegations, a copy of which is hereunto attached and by this reference made a part hereof.

Dated this 10 day of December, 1932.

C. Stang Anderson, Hayden, Merritt, Summers & Bucey, Proctors for Petitioner.

[fol. 19] *Duly sworn to by C. Stang Anderson. Jurat omitted in printing.*

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING INTERVENTION BY NORWEGIAN CONSUL—Filed Dec. 12, 1932

The above entitled cause having come on regularly for hearing upon the petition of C. Stang Anderson, as Acting Consul of the Kingdom of Norway, resident of Seattle, for an order of court granting leave to intervene for the purpose of filing exceptions and exceptive allegations, and the court having been fully advised:

Now, therefore, it is hereby ordered that C. Stang Anderson, as such Acting Consul of the Kingdom of Norway, be, and he hereby is, granted leave to file exceptions and exceptive allegations, a copy of which is attached to said petition, and to make any other showing as such Acting Consul which shall be deemed appropriate by this court.

Done this 12 day of December, 1932.

Edward E. Cushman, Judge.

[File endorsement omitted.]

[fol. 21] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLAIMANT'S EXCEPTIONS TO LIBEL—Filed Dec. 12, 1932

Exceptions of Ocean Transport Co. Ltd., a corporation, claimant, to libel in the above entitled cause of Peter Van der Weyde, libelant, show:

I

(1) That heretofore, and on September 15, 1922, there was instituted a suit in admiralty by the filing of a libel in rem in behalf of Peter Van der Weyde, as libelant, against the steamship "Luise Nielsen," as respondent, to

recover damages (inclusive of wages, maintenance and cure) in the sum of $8410.00, for personal injuries alleged to have been suffered as the result of unwholesome food, and as the result of a fall on or about May 12, 1922, through an open, unguarded, unlighted hatch, while libelant was employed on board said steamship as a seaman.

(2) That thereafter, on September 15, 1922, due process in rem was issued upon said libel against said steamship [fol. 22] "Luise Nielsen," which same, upon September 16, 1922, was seized by the United States Marshal. That to obtain release thereof from custody, upon September 19, 1922, claim of ownership and bond in the form of a stipulation to abide and pay the decree, were filed by the master of said steamship, in behalf of B. Stolt Nielsen & Company, Inc., a corporation, as owner thereof.

(3) That on October 5, 1922, answer to said libel was filed by said claimant, B. Stolt Nielsen & Company, Inc.

(4) That on January 30, 1923, and on September 22, 1923, claimant's depositions of witnesses Gustav Brekke, Jacob Marcelius Velde, Leonard Alf Revang and J. M. Velde, together with Exhibits A, B, C, X, Y, Z, P and Q, were filed.

(5) That on April 9, 1924, there was entered an order of court, granting petition for intervention by the Norwegian Consul, at which time such petition and exceptive allegations were filed by said Norwegian Consul.

(6) That after argument upon such exceptive allegations, said libelant on May 5, 1924, filed an amended libel, and sought leave to plead the Asiatic American Steamship Company as an additional party respondent, which leave was granted by order of court on May 12, 1924, whereupon monition against such additional respondent was issued forthwith.

(7) That by such amended libel, said libelant reiterated and reasserted, with some amplification, his said cause of action upon the same grounds and for the same personal injuries alleged by his original libel—the only substantive change effected by the amended libel being to allege that the respondent Asiatic American Steamship Company, by virtue of a certain charter party, was the owner of said

vessel pro hac vice, and as such in charge and in control [fol. 23] thereof and hence personally liable to indemnification of libelant for his said injuries.

(8) That on May 19, 1924, said respondent Asiatic American Steamship Company filed its answer to said amended libel, denying the allegations to the effect that it was owner pro hac vice of said steamship.

(9) That on May 28, 1924, said claimant filed its answer to said amended libel, wherein claimant admitted the ownership of said steamship as of the time when libelant sustained his alleged injuries, but denied such ownership as of the date of its answer; wherein claimant denied that respondent Asiatic American Steamship Company was the owner of said steamship pro hac vice, and denied numerous other material allegations of said amended libel.

That claimant, by such answer, for its affirmative defenses, alleged that said libelant was a Dutchman, being a subject of the Queen of the Netherlands; alleged that said steamship was a Norwegian vessel, flying the Norwegian flag, and owned and operated by a Norwegian corporation; alleged that the contract of hiring between said steamship and said libelant contained, among others, provision that "he (libelant) shall serve on board the ship in the capacity of able seaman and ordinary seaman, with obligations and rights as are stated in the maritime law of the 20th of July, 1893, (Norwegian law)," and that "any disagreement as to the interpretation of this contract shall be temporarily decided by the Norwegian Consul, and not in a foreign country be brought in a foreign court;" alleged that certain quoted provisions of the Norwegian maritime law were applicable to the rights and obligations of said libelant, said steamship and said claimant; alleged [fol. 24] that in addition to such provisions of the Norwegian maritime law there was at the time of libelant's injury in force in Norway a Seamen's Compensation Act, known as the law of August 18, 1911, relating to the insurance of seamen against accidents, providing for compensation insurance from a state-administered fund for injured Norwegian seamen and for foreign seaman injured on Norwegian vessels whose countries extend reciprocal rights to Norwegians on their vessels, and providing that if an accident renders it necessary to send an injured seaman

to a hospital, the Royal Accidents Insurance Office of Norway will make payment of the expenses connected with the treatment and maintenance of such injured seaman, even though he be a foreigner, without possessing or claiming any right to reimbursement from the owner of the ship upon which such injury occurred, and further providing in the first paragraph of Section 32 of said law that "accidents coming within the scope of this law" (of which the accident to libelant in the present cause is one) "impose no obligation upon the owners, master, or other officer of the ship concerned to pay personally, or out of the ship's estate (ship and freight) any compensation, unless it has been proved by a penal sentence that one or the other of such persons has caused the injury with intent or through gross negligence"; and alleged that libelant had theretofore been cared for in a hospital and maintained at an expense of over $1800.00.

(10) That on May 28, 1924, hearing was had by said District Court of the United States for the District of Oregon, Honorable Robert S. Bean, judge presiding, at which hearing oral testimony and written depositions were offered, received and considered upon the issues presented by [fol. 25] the exceptions and exceptive allegations of such Norwegian Consul, and upon the issues presented by the amended libel of libelant and the answer thereto of respondent Asiatic American Steamship Company and claimant B. Stolt Nielsen & Company, Inc.

(11) That as the result of such pleadings and the evidence received by said court at such hearing, there was entered by said court its final decree on June 2, 1924, whereby said amended libel of libelant was dismissed, with costs in favor of claimant, B. Stolt Nielsen & Company, Inc. and respondent Asiatic American Steamship Company.

(12) That no appeal was ever taken by appellant or any other party litigant in said cause from said decree; that no application for review of said decree by any appellate court was ever made; that the time within which to appeal from said decree or to cause review thereof to be made by any appellate court has long expired. That said decree is now a final decree, completely determining and adjudicating the rights and obligations of said libelant and of said

steamship "Luise Nielsen," arising out of all causes of action stated by or involved in said amended libel.

II

(1) That Peter Van der Weyde, the libelant in said cause herein described, is the same person who is libelant in the present cause now pending. That the steamship "Luise Nielsen," respondent in said former admiralty cause, is the same steamship impleaded as respondent in the present cause now pending, the name of such steamship having been heretofore changed to the steamship "Taigen Maru."

(2) That the subject matter and the causes of action pleaded by and involved in said former admiralty cause [fol. 26] above described are identical with those pleaded by and involved in the present admiralty cause now pending.

III

That said libelant is barred from maintaining the present admiralty cause by the complete and final adjudication of the United States District Court for the District of Oregon in said former admiralty cause above described. That the present admiralty cause is res judicata.

IV

That a certified copy of the record in said former admiralty cause, being No. A-9008 of the files of the United States District Court for the District of Oregon, entitled "Peter Van der Weyde, Libelant, v. The Steamship 'Luise Nielsen', her tackle, apparel, engines, boilers and furniture, and Asiatic American Steamship Company, a corporation, Respondents, B. Stolt Nielsen & Company, Inc., a corporation, Claimant," is presented to the above entitled court and filed with the clerk thereof as a basis for and as a part of claimant's foregoing exceptions, being incorporated therein by this reference. That such record of said former cause so presented and filed, among other papers, includes the following pleadings and documents, to-wit:

Certified transcript of docket entries;
Certified copy of libel;
Warrant of Arrest;

Marshal's return of seizure;
Claim of Ownership;
Answer of Claimant;
Claimant's Interrogatories;
Petition of Norwegian Consul for Intervention;
[fol. 27] Order allowing intervention;
Exceptive allegations of Norwegian Consul;
Amended Libel;
Monition;
Return of Service on Monition;
Answer of Respondent to Amended Libel;
Answer of Claimant to Amended libel;
Final decree;
Stipulation as to record;
Order as to record;
Libelant's answers to interrogatories;
Clerk's certificate dated June 23, 1931;
Clerk's certificate dated July 14, 1931;
Original depositions, filed January 30, 1923, of witnesses Gustav Brekke, Jacob Marcelius Velde, and Leonard Alf Revang;
Original deposition, filed September 23, 1923, of witness J. M. Velde;
Transcript of testimony of Stanley P. Fleming and Peter Van der Weyde, received at hearing May 28, 1924;

Exhibits:

A, being official log book;
B, being form of agreement, in Norwegian;
C, being official crew list;
X, being employment contract bearing libelant's signature;
Y, being translation of contract;
Z, being volume of Norwegian shipping laws;
P, being translation of Section 90 of the Norwegian maritime law;
Q, being translation of Section 100 of the Norwegian maritime law;

[fol. 28] Wherefore, claimant prays:

(1) That libel in the above entitled cause be dismissed because libelant's cause of action is barred by former final adjudication;

(2) That if claimant's exceptions be overruled, claimant be allowed time within which to plead to said libel by answer.

Hayden, Merritt, Summers & Bucey, Proctors for Claimant.

Office and Post Office Address, 540 Central Building, Seattle, Washington.

Duly sworn to by Lane Summers. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

EXCEPTIVE ALLEGATIONS—Filed Dec. 12, 1932

To the Honorable E. E. Cushman, Judge of the above entitled Court:

Your Petitioner, C. Stang Anderson, Acting Consul of the Kingdom of Norway, having leave to intervene herein and file exceptions or exceptive allegations, now files exceptive allegations, praying consideration thereof, as follows:

I

That said Petitioner, C. Stang Anderson, is the duly accredited Acting Consul of the Kingdom of Norway at Seattle, Washington.

II

That the respondent steamship "Taigén Maru", at all times mentioned by the libel in the above entitled cause, then known as the steamship "Luise Nielsen," was a Norwegian vessel flying the Norwegian flag, being owned and operated by subjects of the Kingdom of Norway, to-wit, B. Stolt Nielsen & Company, Inc., a corporation.

[fol. 30] III

That as your Petitioner is informed and believes, libelant is a subject of Her Majesty the Queen of the Netherlands.

IV

That by the general maritime law said libelant was at the times mentioned by said libel a member of the crew of said steamship "Luise Nielsen", and as such a subject to His Majesty the King of Norway, in so far as his rights and obligations as a seaman were concerned, and was governed and bound by the laws of the Kingdom of Norway.

V

That the law of the Kingdom of Norway regarding compensation and care of seamen on Norwegian vessels, which was in force at the time libelant signed ship's articles for the voyage on said steamship "Luise Nielsen" during which he was hurt, and which was still in force at the time libelant was injured, and likewise still in force at the present time, is as follows:

"Sec. 90. If any member of the crew is taken ill, or has been injured after commencing his service, it is the Master's duty to procure him the necessary treatment on board or ashore, but if his condition is such as to unfit him for service for a long term, or if he is suffering from syphilis, he may be dismissed at once. If such takes place abroad the Master shall hand him over to the Consul, or, if there is no Consul at the place, otherwise provide for his proper maintenance.

"If a seaman is dismissed on account of illness, or injuries contracted by his own default, or syphilis, his wages shall be payable only for the time of his service, and there may be deducted therefrom the expenses incurred by his treatment and care. If he is not dismissed, his wages shall be forfeited for the time he is incapable of working, and he must himself pay the expenses incurred by his treatment.

"In all other cases of sickness or injury, a sick, or in- [fol. 31] jured seaman shall, if he is not dismissed, be entitled to enjoy his full wages during his illness, and the necessary treatment at the cost of the owners. If he is dismissed he shall receive his wages until his discharge takes place, or if no such takes place, up to the day of the departure of the ship, and, besides, maintenance and treatment at the expense of the owners during 4 weeks, if in Norway, or at any place abroad where, under the Agree-

ment, the seaman may be dismissed, but otherwise during 12 weeks, counting from the discharge of the seaman, or, if no discharge takes place, from the departure of the ship. If there is no Norwegian Consul at the place, to whom the sick seaman can be handed over, and the Master is thereby compelled to make advances for the medical care and maintenance of a Norwegian seaman abroad, which, according to the rules herein above contained, the owners are not bound to bear, such owners shall be entitled to demand reimbursement of their advances from the State Treasury. The State cannot make any claim on the seaman on account of such outlays.

"Sec. 100. If a seaman is dissatisfied with the settlement of his account made out by the Master, he may demand that the dispute shall be decided by the discharging officer.

"If, otherwise, any dispute relating to ship service should arise between the Master and a seaman while the ship is abroad, the case shall be submitted to the decision of the Consul appointed at the place, or at the first place where there is a Norwegian Consul.

"The decision of the Consul shall be deemed binding on the parties, until the case can be brought before the Norwegian Court of Justice."

VI

That the ship's articles with said steamship "Luise Nielsen" which libelant signed for the voyage during which his injury occurred, were and are as follows:

"Contract of Hiring

"Shipmaster J. M. Velde, Master of the Steamship Luise Nielsen, belonging to Haugesund, has engaged the following members of crew born the —— at ——, to ac-
[fol. 32] company the vessel from Astoria to Orient and further (to accompany the ship for a time of —— months) (to accompany the ship from Astoria and back to America) on the following conditions:

"1) that he shall serve on board the ship in the capacity of able seaman and ordinary seaman with obligations and rights as are stated in the maritime law of the 20th of July, 1893.

"2) that he shall commence the service on board the —— (date) —— (hour).

"3) that the wages will be 200 kroner per month for able seamen counted from the day the service commences, (that the wages will be 150 kroner per month for ordinary seamen).

"4) that the discharge shall be effected at the latest, the 2nd working day after the service on board the ship has ceased.

"5) any disagreement as to the interpretation of this contract shall be temporarily decided by the Norwegian Consul, and not in a foreign country be brought in a foreign court.

"For overtime will be paid —— Ore (a fraction of a korner per hour.

Able seamen	Ordinary seamen
Otto Olsson,	Jesse E. Blum,
Sulo Seppa,	Peter Van der Weyde,
	Roy Brunner.

"In witness whereof both have signed by their own hands.

—— (place) —— (date).

"The above contract in my presence has been read and agreed after the seaman has been asked by me if there have been any promises that have not been stated in the contract. Certified to.

—— ——."

VII

That in addition to the provisions of the law of the Kingdom of Norway, heretofore quoted, the law of that country [fol. 33] effective at the time of libelant's alleged injury, included a Seamen's Compensation Act, known as the Law of August 18, 1911, relating to the insurance of seamen against accidents. This enactment provided from a state-administered fund compensation insurance to injured Norwegian seamen, and also to foreign seamen injured on Norwegian vessels, whose countries extended reciprocal rights to Norwegians on their vessels. That by such enactment it was provided that if the accident renders it necessary to send the injured seaman to a hospital, the Royal Accidents Insurance Office will undertake payment of ex-

penses in connection with the treatment and maintenance of the seaman injured, even though he be a foreigner, without claiming or possessing any right to reimbursement from the owners of the ship. That by the first paragraph of Section 32 of such enactment it is provided that: "accidents coming within the scope of this law" (of which the accident to libelant in the present cause is one) "impose no obligation upon the owners, master, or other officer of the ship concerned to pay personally, or out of the ship's estate (ship and freight) any compensation unless it has been proved by a penal sentence that one or other of such persons has caused the injury with intent or through gross negligence."

VIII

That as your petitioner is informed and believes, after the injury described by said libel was sustained, libelant received medical, nursing and hospital care in a hospital at Astoria, Oregon, at the expense of the owner of said steamship "Luise Nielsen" ("Taigen Maru") and the Norwegian government, to an amount in excess of $1800.00 —approximately $2000.00.

[fol. 34]

IX

That all of the foregoing facts in respect to the several provisions of the Norwegian law, the ship's articles, and the relief afforded to libelant, have been disclosed and established by sworn testimony of record in a former admiralty cause, instituted by the same person who is libelant herein, against the same steamship which is respondent herein (then named the steamship "Luise Nielsen") such former admiralty cause being No. A-9008 in the United States District Court for the District of Oregon, entitled: "Peter Van der Weyde v. The Steamship 'Luise Nielsen', etc., Respondent," a certified copy of the record in which cause has been transferred to the present cause, and made a matter of record herein.

X

That despite the fact that said steamship, formerly the "Luise Nielsen", now the "Taigen Maru", is now a Japanese vessel, and no longer a Norwegian vessel, your petitioner as Norwegian Consul is nevertheless officially concerned, by virtue of the fact that in making sale of said steamship to the present Japanese owner thereof, the

former Norwegian owner, B. Stolt Nielsen & Company, Inc., obligated itself to deliver said steamship "free from all debts and encumbrances", as a result of which obligation such former Norwegian owner is interested in the adjudication of any claims against said vessel, in accordance with the rights and obligations arising from the Norwegian law effective at the time such claim accrued.

Wherefore, your petitioner prays:

(1) That by order of this court the libelant's cause of action in the above entitled cause be dismissed as having been finally adjudicated by the United States District Court [fol. 35] for the District of Oregon:

(2) That if not dismissed as res judicata, the present cause be dismissed upon the foregoing exceptive allegations, and the dispute between libelant and respondent be left by this court undetermined, subject to adjustment and disposition by petitioner as such Consul, in accordance with said steamship's articles and the controlling law of Norway;

(3) And that in the event this court retains jurisdiction in the present cause, it will refer the dispute involved herein to petitioner as such Consul, for adjustment and disposition in accordance with such ship's articles and such laws of Norway.

C. Stang Anderson, Petitioner. Hayden, Merritt, Summers & Bucey, Proctors for Petitioner.

[fol. 36] *Duly sworn to by C. Stang Anderson. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO FILING RECORD IN PREVIOUS CAUSE, ETC.—Filed Dec. 16, 1932

Whereas, the undersigned proctors for libelant were also proctors for the same libelant in former litigation hereinafter described;

Now, therefore, it is hereby stipulated that claimant may file certified transcript of record in admiralty cause No. A-9008 of the files of the United States District Court for the District of Oregon, entitled "Peter Van der Weyde, Libelant, vs. Steamship 'Luise Nielsen', etc., Respondent", in the above entitled cause, and that the same may be considered part of claimant's exceptions to libel, without a copy thereof being attached to and served with copy of such claimant's exceptions to libel as served upon the undersigned proctors for libelant.

Lord & Moulton, Proctors for Libelant. Hayden, Merritt, Summers & Bucey, Proctors for respondent and claimant.

[File endorsement omitted.]

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

RECORD ENTRY OF HEARING—Jan. 9, 1933

On this 9th day of January, 1933, this cause comes on for hearing on Claimants' Exceptions to Libel and Exceptive Allegations of Intervenor, Norwegian Consul, Claimant and Intervenor appearing by Lane D. Summers, their counsel and counsel for Libelant not appearing. At the conclusion of the argument by counsel for Claimant and Intervenor the Court announces from the bench that he declines to entertain jurisdiction. Order is to be presented.

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

RECORD ENTRY OF HEARING—Jan. 23, 1933

On this 23rd day of January, 1933, this cause comes on for presentation of proposed Order of Dismissal, the Libelant appearing by Mr. Lord of Messrs. Lord and Moulton and Claimant appearing by Lane D. Summers of Messrs. Hayden, Merritt, Summers and Bucey. Counsel for Claimant waives any ruling heretofore made on Excep-

tive Allegations and argument is now had on the same. The Court announces from the bench that the Court declines to entertain jurisdiction, cause is dismissed and proctor for Libelant is given leave to file affidavits not later than Thursday. Proposed Decree is lodged with the Clerk and is to be noted on the calendar for Saturday.

[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESPONSE TO EXCEPTIVE ALLEGATIONS—Filed Jan. 26, 1933

Now comes Peter Van der Weyde, libelant herein, and responds to the exceptive allegations of C. Stang Anderson, acting counsel of the Kingdom of Norway, and admits, denies and alleges as follows:

Admits Paragraphs I, II, III, IV, V, VI, VII, VIII and IX thereof.

For a further and separate response to said exceptive allegations, libelant alleges:

I

That libelant is a resident alien of the United States, having been born in the Kingdom of The Netherlands, and arrived in the United States in July, 1907, and deserted the S. S. Marquette, a vessel of English registry, upon which he was a seaman, and ever since said time has lived in the United States, except for occasional voyages which libelant has made as a seaman upon vessels of American registry.

II

That on the 17th day of March, 1922, libelant was employed as a seaman on the Steamship Luise Nielsen, then [fol. 41] owned as alleged in the exceptive allegations, for a round trip voyage between the port of Portland, Oregon, and the Orient, to be discharged at the port of Portland; that said vessel at said time was chartered to an Oregon corporation known as the Asiatic-American Steamship Company, but under the terms of said charter the registry of said vessel remained under the laws of Norway, and the

crew were in the employ and pay of the owners; that a cargo was loaded on said vessel at the port of Portland, which was discharged in Japanese and Chinese ports, and a cargo was taken aboard there and discharged in the port of Portland.

III

That on the 16th day of May, 1922, libelant met with certain personal injuries which are set forth in the libel on file herein, to which reference is hereby made, and hereby incorporated herein; that thereupon libelant was placed under medical care and received hospital attention, as alleged in the exceptive allegations; that libelant's injuries were of such a nature that libelant is almost totally and permanently disabled from following any gainful occupation, and that said fact was well known at the time of the hearing of the admiralty proceeding referred to in the exceptions of the claimant herein and in the exceptive allegations of said C. Stan Anderson, being the suit instituted by libelant at the time libelant filed the libel in the United States District Court for the District of Oregon referred to, and at the time of the hearing of the petition of the Norwegian consul for intervention in said suit referred to in the exceptive allegations.

IV.

That at the time of the trial of said suit, when the said Norwegian consul at Portland did claim in open court that under the laws of the Kingdom of Norway libelant was entitled to receive and be paid a compensation, which laws are similar in import to the compensation laws now adopted [fol. 42] by many states, and did state that said Peter van der Weyde would be paid said compensation, and that R. S. Bean, the judge trying said proceedings, did thereupon refuse to take jurisdiction of the proceedings against said S. S. Luise Nielsen to recover damages for the personal injuries sustained by said Peter van der Weyde, as alleged in his libel; that at said time libelant was still disabled and suffered great physical pain, and it was libelant's intention to return to his mother's home in The Netherlands, where libelant would be able to live in comparative comfort on the compensation which would be paid him under the said Norwegian laws; that time expired and libelant called

upon said Norwegian consul and requested the said Norwegian consul to pay said compensation; that said Norwegian consul informed libelant that said "money was lying in Norway" under a Norwegian insurance act; that every few months thereafter libelant did call at the office of said consul to inquire whether said compensation had been received, and time kept passing without the payment of said compensation, or the exhibition of any written instructions by said Norwegian consul regarding the compensation payable to libelant; that thereupon on the 11th day of January, 1929, libelant wrote the Minister from The Netherlands as follows:

January 11, 1929.

"The Minister from The Netherlands, Washington, D. C.

SIR:

At the request of Peter Van der Weyde, a citizen of Holland, residing in the United States, we are submitting to you for such action as may be appropriate, the question of securing him money on account of personal injuries sustained while employed as a sailor on the S. S. "Luise Nielsen". The facts are that Mr. van der Weyde shipped on a round trip voyage from Portland, Oregon, to the Orient and return. The vessel was flying the Norwegian flag and was owned by B. Stoltz Nielson & Company of Haugesund, Norway, but had been chartered to the Asiatic American Steamship Company, an Oregon corporation. The charter did not change the ownership to that of pro hac visa of the Oregon company, so the vessel still remtined a Norwegian vessel.

On the 16th day of April, 1922, Mr. van der Weyde met with an accident by falling through a hatchway which had been left open and was unlighted. The accident resulted [fol. 43] in a fracture of the right femur, injuries to the back and head, and without going into detail as to the extent of the injuries, we may say that his injuries are so permanent and disabling that he never again will be able to resume heavy employment. There is some light work which he might possibly be able to do.

Believing that the case would be governed by the principles of American maritime law, inasmuch as the employment was made in the United States and contemplated a

round trip voyage, etc., a libel was filed against the vessel with a view of securing an indemnity for the injuries done. There was no legal defense to this action because the negligence was so flagrant, but the court on the motion of the attorneys for the Steamship Company, dismissed the suit on the theory that the "law of the flag" controlled and bound the rights of the seamen on the ship, and under the laws of Norway no lien was given against the ship in such cases, but that these laws provided a compensation in the form of monthly payments. It was loudly proclaimed in court that the company had expended vast sums of money in endeavoring to effect a cure of the injured seaman, and that they desired to make payments of compensation in accordance with the laws of Norway, and it was upon this suggestion that the court took the view that he would not apply the American maritime law to the case, inasmuch as a fixed compensation was already provided, and he would not therefore exercise his discretionary right and refusal to apply the law of the United States.

Repeated demands were made by the local Consul for The Netherlands upon the Norwegian consul to pay this compensation, but it has never been paid.

We are writing with a view that you take such official action as may be necessary to secure the payment of this compensation. Further information will be gladly furnished if required.

Respectfully yours, Lord & Moulton, by Wm. P. Lord."

Libelant received the following answer to the above letter:

"Royal Netherlands Legation
Washington, D. C., 9 February, 1929.

SIRS:

In answer to your letter of January 11, 1929, I have the honor to inform you that the Norwegian Steamship Company, B. Stoltz Nielson & Company, of Haugesund, has done everything that can be claimed by Peter van der Weyde ground of the treaty of March 7, 1911, between the Netherlands and Norway concerning maritime accidents and indemnifications. Further the convention of January 9,

1925, between said countries is not applicable in this case as van der Weyde does not reside either in the Netherlands or in Norway.

Yours very truly, J. H. Van Royes, Netherland Minister.

V

[fol. 44] That thereafter libelant continued to request the payment of said compensation, but said compensation has never been paid; that in the meantime, as alleged in the libel, said steamship was sold, but libelant is informed and believes and therefore alleges it to be true, that said steamship was sold by the owners with a warranty to said owners against all claims for damages of every nature and description incurred prior to said sale, and the terms of said sale provided that the purchasers of said steamship would be indemnified against any and all loss on account of any claims being made by any person prior to said sale, and that the vendors would defend any and all such suits, and said steamship was protected by a P. and I. policy with the Assuranceforefingen Skuld of Oslo, Norway, by the terms of which the former owners were insured against loss by reason of the making of any claim, and said policy was in full force and effect at the time libelant was injured, and at the time said vessel was sold; that libelant's said cause was not tried on the merits as to the charge whether said vessel was unseaworthy, and was tried only upon the intervention of the said Norwegian consul at Portland, Oregon.

VI

That said vessel, to libelant's knowledge, has not been within the District of Oregon for a long time prior to the filing of the libel herein; that libelant would have again libeled said vessel if said vessel had been within the jurisdiction of a court within a reasonable distance of where libelant resided, except for the fact that libelant believed that he would be paid the compensation as alleged.

VII

That libelant believes and therefore alleges it to be true that the present owners of said steamship are not interested in the result of libelant's claim, but on the contrary the [fol. 45] defense of this claim is being made by the Assur-

anceforeningen Skuld of Oslo, Norway; that due to the fact that jurisdiction of the court in said proceedings was discretionary, libelant prays that his rights be determined and ascertained, that is to say: that this Court proceed and assess damages under the general principles of the maritime laws of the United States relating to seamen, if the court should be so advised after the hearing of the testimony herein, or if the court be of the opinion that the benefits of the Workmen's Compensation Act should be paid libelant, the court should compel the intervenor to arrange for the payment of said compensation. Libelant further avers that the parties hereto are not prejudiced by the loss of witnesses, inasmuch as there are two witnesses to said accident, viz., Wm. Butnek who resides in Portland, Oregon, and Jack Vanderwerf, who resides near Scappoose, Oregon, both actual witnesses to said account.

Wherefore libelant prays that the exceptive allegations herein be denied and that libelant be awarded relief according to the general principles of the maritime law, as adjudicated by the courts of the United States, and that he be allowed an indemnity for his injuries as prayed for in the libel; that if the court be of the opinion that the jurisdiction should not be entertained, to award libelant indemnity according to the course of the general principles of the maritime law of the United States, then that the court award libelant the sums he would be entitled to be paid as compensation under the laws of the Kingdom of Norway; that libelant be allowed his costs and disbursements incurred herein.

Wm. P. Lord, Arthur I. Moulton, Proctors for Libelant.

[fol. 46] *Duly sworn to by Peter Van der Weyde. Jurat omitted in printing.*

STATE OF OREGON,
County of Multnomah, ss:

I, Arthur I. Moulton, being first duly sworn, on oath says: I am one of the attorneys of record herein for libelant on the 25th day of January, 1933. I served the within Response on the attorneys for the claimant and intervenor herein, by depositing a true copy thereof, duly certified to be such by me, in the United States Postoffice at Portland,

Oregon, the same being enclosed, securely sealed and plainly addressed to Messrs. Hayden, Merritt, Summers & Bucey, Central Building, Seattle, Wash., attorneys of record for claimant and intervenor, fully prepaying the postage thereon.

(Signed) Arthur I. Moulton.

Subscribed and sworn to before me this 25th day of January, 1933. (Signed) Marie Bennett, Notary Public for Oregon. (Seal.)

[File endorsement omitted.]

[fol. 47] In United States District Court

[Title omitted]

Order of Dismissal—Filed Jan. 28, 1933

The above entitled cause having duly and regularly come on for hearing upon January 9 and 23rd, 1933, before the above entitled court, the undersigned judge presiding, upon the exceptive allegations of the Intervenor, C. Stang Anderson, as Consul of the Kingdom of Norway, and upon the exceptive allegations of the claimant, Ocean Transport Co. Ltd., upon the latter date Libelant appearing by his proctor, Wm. P. Lord and orally responding to such exceptive allegations and having been allowed further time in which to reduce to writing and file such responses and such having been done; and the court having given consideration to the consular protest against jurisdiction being entertained in the above entitled cause, and Libelant's response thereto, and having concluded that, in the exercise of its discretion the Court should not hear said cause upon the merits:

Now, therefore, it is hereby ordered:

1. That said cause be and the same hereby is dismissed.

2. That the release bond and the stipulations for costs, filed by said claimant and said intervenor, be and they hereby are discharged, and the sureties thereon exonerated.

3. That said intervenor and said claimant have and recover from the libelant lawful costs hereinafter to be taxed.

Done this 28th day of January, 1933.

Edward E. Cushman, Judge.

[File endorsement omitted.]

Service admitted Jan. 17, 1933.

Lord & Moulton, per L.

[fol. 48] In United States District Court

[Title omitted]

Memorandum of Costs and Disbursements—Filed Feb. 7, 1932

Disbursements	Amount claimed	Amount allowed
Clerk's fees	$ 5.00	
Marshal's fees and charges on release of vessel	1.25	
Attorneys' fees	20.00	
Premium on respondent's stipulation for costs (2 years)	20.00	
Premium on bond for release of vessel (2 years)	270.00	
Paid G. H. Marsh, Clerk, U. S. District Court for District of Oregon, for certified copy of record in former cause, Peter Van der Weyde, libelant, vs. Steamship "Luise Nielsen", etc., filed in support of claimant's exceptions to libel	23.80	
Clerk's fees for filing petition for intervention of C. Stang Anderson, Norwegian Consul	2.00	
Taxed	$342.05	$ .....

Taxed —— —, 1933.

—— ——, Clerk.

Duly sworn to by Lane Summers. Jurat omitted in printing.

[fol. 49] To Lord & Moulton, 1107 Spalding Bldg., Portland, Oregon, Proctors for Libelant:

You will please take notice that on the 13th day of February, 1933, at the hour of 10 o'clock A. M., application will be made to the Clerk of said Court, to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

Hayden, Merritt, Summers & Bucey, Proctors for Claimant and Respondent.

Due service of the within and foregoing Memorandum of Costs and Disbursements and notice of the taxation thereof by the receipt of a true copy thereof, hereby is admitted in behalf of all parties entitled to such service by the Rules of Court, this 2nd day of February, 1933.

Lord and Moulton, Proctors for Libelant.

[File endorsement omitted.]

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING MOTION TO TAX COSTS—Filed April 11, 1933.

The above entitled matter having come on for hearing before the above entitled court, the undersigned judge presiding, upon claimant's motion for taxation of costs, and libelant's motion for disallowance of costs, and the court having heard argument, and being advised, and heretofore having orally granted motion to tax costs and denied motion to disallow costs;

Now, therefore, it is hereby ordered that claimant's motion to tax costs as itemized in its cost bill be, and the same hereby is, granted, and libelant's motion to disallow costs be, and the same hereby is denied.

Done this 11th day of April, 1933.

Edward E. Cushman, United States Judge.

[File endorsement omitted.]

[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed April 21, 1933

To Ocean Transport Co., Ltd., a corporation, claimant above named, and to C. Stang Anderson, intervenor herein, and to Messrs. Hayden, Merritt, Summers & Bucey, your proctors:

You and each of you are hereby notified that Peter van der Weyde, libelant in this suit, intends to appeal and does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree and order heretofore and on the 28th day of January, 1933, made and entered in this suit, which final decree adjudged that the libel be dismissed with costs, and that the claimant and the intervenor and their sureties upon the stipulation for costs filed by them, be exonerated from all liability, and libelant hereby appeals from the said final decree and the whole thereof.

Dated at Portland, in the District of Oregon, this 20th day of April, 1933.

Peter Van Der Weyde, Libelant, by Wm. P. Lord, One of His Proctors.

[File endorsement omitted.]

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 21, 1933

[File endorsement omitted.]

Now comes the above named libelant herein and says that in the record and proceedings in the above entitled cause there is manifest error and said libelant now makes, files and presents the following assignment of errors upon which he will rely.

I

The court erred in dismissing said cause.

II

The court erred in holding that jurisdiction between the libelant and the intervenor, C. Stang Anderson, as consul of the Kingdom of Norway, was a discretionary jurisdiction in the court.

III

The court erred in entertaining the exceptive allegations and in not requiring the claimant and respondent and intervenor to answer.

Wherefore libelant prays that the decree herein be reversed and that the court try this cause de novo in this court and award libelant such damages as he has sustained by reason of the wrongful acts complained about in the libel.

Lord & Moulton, Proctors for Libelant.

[fol. 53] STATE OF OREGON,
County of Multnomah, ss:

I, Wm. P. Lord, being first duly sworn, on oath say: I am one of the attorneys of record herein for libelant; on the 20th day of April, 1933, I served the within Notice of Appeal and Assignment of Errors on the attorneys for the claimant and intervenor herein, by depositing a true copy thereof, duly certified to be such by me, in the United States Postoffice at Portland, Oregon, the same being enclosed in an envelope, securely sealed and plainly addressed to Messrs. Hayden, Merritt, Summers & Bucey, Central Building, Seattle, Wash., attorneys of record for claimant and intervenor, fully prepaying the postage thereon.

(Signed) Wm. P. Lord.

Subscribed and sworn to before me this 20th day of April, 1933. Marie Bennett, Notary Public for Oregon. (Seal.) Commission expires Feb. 17, 1937.

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR LEAVE TO PROSECUTE APPEAL WITHOUT GIVING BOND—Filed April 29, 1933

Now comes libelant and moves the court for an order permitting libelant to prosecute this appeal without the filing of a bond.

This motion is based upon the records and files herein wherein it affirmatively appears that the libelant was a seaman on the S. S. "Luise Nielsen" and on the 16th day of May, 1922, was injured during the course of a voyage between the Columbia River and the Orient and return, and that libelant is a seaman within the meaning of Section 837, Title 28, of the Judicial Code.

Lord & Moulton, Proctors for Libelant.

[File endorsement omitted.]

[fol. 55] STATE OF OREGON,
County of Multnomah, ss:

I, Wm. P. Lord, being first duly sworn, on oath say: I am one of the attorneys of record herein for libelant on the 24th day of April, 1933, I served the within Motion and also Memorandum on the attorneys for the claimant and respondent herein, by depositing a true copy thereof duly certified to be such by me, in the United States Post-office at Portland, Oregon, the same being enclosed in an envelope, securely sealed and plainly addressed to Messrs. Hayden, Merritt, Summers & Bucey, Central Building, Seattle, Wash. attorneys of record for claimant and respondent, fully prepaying the postage thereon.

Wm. P. Lord.

Subscribed and sworn to before me this 24th day of April, 1933. Marie Bennett, Notary Public for Oregon. (Seal.)

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR HEARING—Filed April 22, 1933

The Court has been asked to sign a form of order allowing appeal which contains the following:

"* * *, and the libelant is relieved from furnishing any bond for costs on appeal."

The application, insofar as the Court is advised, is without notice to Claimant or Intervenor.

Libelant asks to be relieved from furnishing a bond for

costs upon the authority of Bainbridge vs. Merchants & Miners Transp. Co., 77 L. Ed. 214.

An appeal by Libelant without the giving of a bond is a matter effecting Claimant. The matter of Libelant's right to prosecute his appeal without the giving of a cost bond is assigned for hearing Saturday, April 29th, 1933 at 10:00 o'clock in the forenoon.

The Clerk is directed to notify the proctors for Libelant, Claimant and Intervenor of this Order.

Signed at Tacoma, Washington, this 22nd day of April, 1933.

Edward E. Cushman, Judge.

Rec'd copy 4/22/33.

O. M. Pitzen, Atty. for Libelant.

[File endorsement omitted.]

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

RECORD ENTRY OF HEARING—April 29, 1933

On this 29th day of April, 1933, this cause comes on for hearing concerning libelant's right to appeal without the giving of a cost bond, libelant appearing by O. M. Pitzen for Messrs. Lord, Moulton & Krause and respondent appearing by Mason Wheeler for Messrs. Hayden, Merritt, Summers & Bucey. Claimant files a memorandum; libelant files motion to prosecute appeal and a memorandum, and the matter is now submitted and is taken under advisement by the Court.

[fol. 58] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above entitled Court:

You will kindly prepare for a transcript for the Apostles on Appeal the following documents in the above entitled cause:

Libel;

Claim of Ownership;

Claimant's Stipulation for Costs;

Petition for Intervention by Norwegian Consul;

Order allowing intervention;

Exceptive Allegations of C. Stang Anderson;

Claimant's Exceptions to Libel;

Stipulation for filing certified transcript of record in previous cause in U. S. District Court for Oregon;

Record of proceedings in Oregon cause filed with Clerk;

Order permitting libelant to respond to Exceptive Allegations;

Response to Exceptive Allegations;

Order of Dismissal;

Notice of Appeal;

Assignments of Error;

Application to be relieved from filing Stipulation for Costs on Appeal and proceedings thereon.

Dated this 10th day of May, 1933.

Lord & Moulton, Proctors for Libelant.

[fol. 59] STATE OF OREGON,
County of Multnomah, ss:

I, Wm. P. Lord, being duly sworn, on oath say: I am one of the attorneys of record herein for libelant on the 10th day of May, 1933, I served the within Præcipe on the attorneys for the claimant and respondent herein, by depositing a true copy thereof, duly certified to be such by me, in the United States Postoffice at Portland, Oregon, the same being enclosed in an envelope, securely sealed and plainly addressed to Messrs. Hayden, Merritt, Summers & Busey, Central Bldg., Seattle, Wash., attorneys of record for claimant and respondent, fully prepaying the postage thereon.

(Signed) Wm. P. Lord.

Subscribed and sworn to before me this 10th day of May, 1933. (Signed) Marie Bennett, Notary Public of Oregon. (Seal.) Commission expires Feb. 17, 1937.

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

COUNTER PRÆCIPE OF RESPONDENT AND CLAIMANT

To the Clerk of the above entitled Court:

You will kindly prepare for a transcript for the apostles on appeal the following documents in the above entitled cause, in addition to the documents designated in the libelant's præcipe:

(1) Affidavit of Lane Summers regarding amount of release bond;
(2) Release bond;
(3) Cost bill;
(4) Order granting motion to tax costs;
(5) Minute of journal entry of all orders of the court.

Dated May 15, 1933.

Hayden, Merritt, Summers & Bucey, Proctors for Respondent and Claimant.

[File endorsement omitted.]

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO ORIGINAL EXHIBITS—Filed May 18, 1933

It is hereby stipulated that the Clerk, in transmitting the record in this cause to the Clerk of the United States Circuit Court of Appeals, shall transmit the original exhibits on file with the Clerk of this Court.

Further it is hereby stipulated that prior to the transmittal of such original exhibits, the clerk shall retain the same until June 1, 1933, to afford proctors for respondent and claimant an opportunity to make extracts therefrom.

Dated this 17th day of May, 1933.

(Signed) Lord & Moulton, Proctors for Libelant.

(Signed) Hayden, Merritt, Summers & Bucey, Proctors for Respondent and Claimant.

[File endorsement omitted.]

[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR TRANSMITTAL OF ORIGINAL EXHIBITS—Filed May 20, 1933

Based upon the stipulation on file herein, it is hereby ordered that all of the original documents and exhibits incorporated in claimant's exceptions to Libel, be reference, and heretofore filed with the Clerk of the above entitled court (being the records, papers and documents transmitted by G. H. Marsh, Clerk of the United States District Court for the District of Oregon in Cause No. A-9008), to-wit, documents and exhibits hereinafter listed, shall be transmitted to the Clerk of the Circuit Court of Appeals, list of such documents being as follows:

1. Certified transcript of docket entries;
2. Certified copy of Libel;
3. Warrant of Arrest;
4. Marshal's Return of seizure;
5. Claim of Ownership;
6. Answer of Claimant;
7. Claimant's Interrogatories;
8. Petition of Norwegian Consul for Intervention;
9. Order allowing Intervention;
10. Exceptive Allegations of Norwegian Consul;
11. Amended Libel;
12. Monition;
13. Return of Service on Monition;
14. Answer of Respondent to Amended Libel;

[fol. 63] 15. Answer of Claimant to Amended Libel;

16. Final Decree;
17. Stipulation as to record;
18. Order as to record;
19. Libelant's answers to interrogatories;
20. Clerk's certificate dated June 23, 1931;
21. Clerk's certificate dated July 14, 1931;
22. Original depositions filed January 30, 1923, of witnesses Gustav Brekke, Jacob Marcelius Velde, and Leonard Alf Revang;
23. Original deposition, filed September 23, 1923, of witness J. M. Velde;

24. Transcript of testimony of Stanley P. Fleming and Peter Van De Weyde, received at hearing May 28, 1924;

25. Exhibits:

A, being official log book;
B, being form of agreement, in Norwegian;
C, being official crew list;
X, being employment contract bearing libelant's signature;
Y, being translation of contract;
Z, being volume of Norwegian shipping laws;
P, being translation of Section 90 of the Norwegian maritime law;
Q, being translation of Section 100 of the Norwegian maritime law.

Done in open court at Tacoma, Washington, this 20th day of May, 1933.

Edward E. Cushman, Judge.

Approved.

Hayden, Merritt, Summers & Bucey.

[File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE EXTENSION OF TIME—Filed May 18, 1933

It is hereby stipulated between the parties hereto, through their undersigned proctors, that the libelant may have to and including the 19th day of June, 1933, as time within which to docket this cause and file the apostles on appeal with the Clerk of the Circuit Court of Appeals for the Ninth Circuit.

Dated this 17th day of May, 1933.

(Signed) Wm. B. Severyns, (Signed) Lord & Moulton, Proctors for libelant. Hayden, Merritt, Summers & Bucey, Proctors for respondent and claimant.

[File endorsement omitted.]

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Filed May 18, 1933

Based upon the stipulation of the parties hereto, through their undersigned proctors,

It is now hereby ordered that the libelant may have to and including the 19th day of June, 1933, as time within which to docket this cause and file the apostles on appeal with the clerk of the Circuit Court of Appeals for the Ninth Circuit.

Dated this 17th day of May, 1933.

Edward E. Cushman, Judge.

Approved as to form.

(Signed) Hayden, Merritt, Summers & Bucey

[File endorsement omitted.]

[fols. 66-67] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 68] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 7192

PETER VAN DER WEYDE, Libelant Appellant,

vs.

The Steamship "TAIGEN MARU" Her Tackle, Apparel, Engines, Boilers and Furniture, Respondent.

OCEAN TRANSPORT CO., LTD., a Corporation, Claimant Appellees.

MOTION FOR ORDER ALLOWING APPELLANT TO PROCEED WITHOUT PREPAYMENT OF COSTS, ETC.—Filed Aug. 21, 1933

Now comes libelant and appellant and moves the court for an order permitting him to proceed in this cause without prepayment of clerk's fees, and that a rule requiring the printing of the transcript and briefs may be dispensed

with, and that the same may be typewritten, and that the clerk may be permitted to refund the filing fee heretofore paid in this cause.

This motion is based on Section 837, of title 28, Judicial Code, permitting the appellant to proceed without prepayment of fees and furnishing bonds on appeal, and also upon a decision of the United States Supreme Court in Bainbridge v. Merchants and Miners Transport Co., 77 L. Ed. 217, 1933 A. M. C. 32 and also upon the affidavit of appellant attached hereto and by this reference made a part of this motion.

(Signed) Wm. P. Lord, Arthur I. Moulton, Proctors for Appellant.

[fol. 69] In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted]

Affidavit of Peter Van Der Weyde—Filed Aug. 21, 1933

United States of America,
District of Oregon.

I, Peter van der Weyde, being first duly sworn, on oath say: that on the 17th day of March, 1922, I signed on the above steamship as an ordinary seaman. She was then flying the Norwegian flag and had been chartered to make three voyages between the Columbia River and the Orient, and at the time when I signed on was sub-chartered to an Oregon corporation. Practically the entire crew of the vessel were employed in Portland and signed on for a discharge on the Columbia River.

On May 15th, 1922, I fell through a hatch on the vessel and sustained frightful personal injuries from which I have never recovered. I was given hospitalization at the expense of the ship but long before my condition became stationary I was discharged from the hospital and was never paid any maintenance or indemnity on account of my injury. The accident was due to the leaving off of hatches while the vessel was at sea and I was directed to chip rust and fell through the open hatch which was unlighted, etc., [fol. 70] I brought suit for indemnity and the Norwegian vice-consul intervened and set up that the liability of the parties was subject to the law of the flag. It was shown

in evidence before Judge R. S. Bean that Norway provided a compensation act for seamen employed in its vessels and that compensation would be paid me, and on this condition Judge Bean remanded the matter to the consul. I have never been paid a cent and my demands to the consul here have been put off with promises and my demands to the foreign minister have been ignored.

Eventually the vessel was sold to Japanese interests and when the vessel returned to Puget Sound I caused the vessel to be libeled and the Norwegian vice-counsul intervened and it is shown that under the laws of Norway the Norwegian government is still liable, if any liability exists, to pay compensation by reason of a warranty given in connection with the sale of the vessel.

I filed a transcript with the clerk but am unable to pay the fees or to print said transcript and I desire to proceed in this cause under Section 837, Title 28, Judicial Code, and desire that the filing fees heretofore paid to the Circuit Court of Appeals be refunded to me as was ordered by the United States Supreme Court in the case of Bainbridge v. Merchants and Miners Transport- Co., 77 L. Ed. 217, 1933 A. M. C. 32; I desire to have typewritten transcripts and brief made; that my occupation is that of a seaman and I would still be going to sea except for the disabling injuries that I sustained.

(Signed) Peter Van Der Weyde.

Subscribed and sworn to before me this 14th day of July, 1933.

(Signed) Wm. P. Lord, Notary Public for Oregon.
Commission Expires Feb. 17, 1937.

[File endorsement omitted.]

[fol. 71] In United States Circuit Court of Appeals

[Title omitted]

Order Granting Leave to Appellant to Prosecute Appeal Under 28 USCA 837—Aug. 21, 1933

Ordered motion of appellant to prosecute appeal without prepayment of costs, in accordance with 28 U. S. C. A. 837, granted.

[fol. 72] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Ordered appeal in above cause submitted on brief on file on behalf of appellant, and argued by Mr. Lane Summers, proctor for appellee, and submitted to the court for consideration and decision.

[fol. 73] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE—NOV. 19, 1934

By direction of the court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion filed.

[fol. 74] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 7192—Nov. 19, 1934

PETER VAN DER WEYDE, Appellant

vs.

OCEAN TRANSPORT COMPANY, LTD., a Corporation, Claimant of the Steamship "Taigen Maru", Her Tackle, Apparel, Engines, Boilers and Furniture, and C. Stang Anderson, Appellees.

Upon Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

Before: Wilbur, Sawtelle and Garrecht, Circuit Judges.

OPINION FILED—Nov. 19, 1934

SAWTELLE, Circuit Judge:

On April 18, 1931, appellant herein filed this libel in rem against the steamship "Taigen Maru", her tackle,

etc., based upon a claim for personal injuries alleged to have been suffered by him on May 16, 1922, while aboard the respondent vessel on the high seas. The appellant at the time of his alleged injuries was a subject of Her Majesty the Queen of the Netherlands and a member of the crew, under Norwegian articles signed by him at Astoria, upon the respondent vessel (then the S. S. "Luise Nielsen") of Norwegian nationality and under the ownership of B. Stolt Nielsen & Company, Inc., a corporation of the Kingdom of Norway.

C. Stang Anderson, Acting Consul of Norway, at Seattle, was allowed to intervene and file exceptive allegations in which he protested against the court taking jurisdiction on the ground that it was a dispute between a member of the crew of a Norwegian vessel and the master and owners of said vessel and according to the ship's articles and [fol. 75] the applicable law of Norway was a dispute to be decided by the Norwegian Consul subject to appeal to the courts of Norway.

The District Court entered an order dismissing the libel which reads in part as follows:

"* * * The court having given consideration to the protest against jurisdiction being entertained in the above entitled cause, and libelant's response thereto, and having concluded that, in the exercise of its discretion, the court should not hear said cause upon the merits:

"Now Therefore, it is hereby ordered:

"(1) That said cause be, and the same hereby is dismissed; * * *".

A former libel was filed in the District Court of the United States for the District of Oregon on September 15, 1922, against the S. S. "Luise Nielsen" based upon the same cause of action set forth in the libel in the case at bar. The Vice Consul of Norway at Portland, Oregon, was permitted to intervene in that suit and file exceptive allegations in which he protested against the court taking jurisdiction on the same grounds urged in the present suit. Amended pleadings were thereafter filed and on June 2, 1924, the District Court entered an order dismissing the libel in accordance with the prayer of the Vice Consul of Norway.

Between the time the first libel was dismissed by the

District Court of the United States for the District of Oregon and the time the present libel was filed, the owner of the S. S. "Luise Nielsen" sold that steamship to a Japanese company and her name has been changed to S. S. "Taigen Maru." However, the former Norwegian owner in making the sale to the present Japanese owner obligated itself to deliver said steamship "free from all debts and incumbrances" as a result of which obligation the former Norwegian owner is interested in the adjudication of any claims against said vessel in accordance with the Norwegian law in effect at the time such claim accrued. For this reason, C. Stang Anderson, Acting Consul of Norway, claims to be officially concerned.

On this appeal appellee argues, apparently for the first time, that the decree of the lower court dismissing the libel should be affirmed because the court was without jurisdiction to entertain the suit, and that it is not a case in which the District Court has even discretionary power to [fol. 76] entertain the suit. It is well established that the question of jurisdiction of the trial court may be raised at any time and is not waived by failure to raise the issue in the trial court and even in the absence of the question being raised by the parties, it is the duty of the appellate court to determine both its own jurisdiction and the jurisdiction of the trial court. M. C. & L. Ry. v. Swan, 111 U. S. 379; C. B. & Q. Ry. Co. v. Willard, 220 U. S. 413; B. & O. R. Co. v. City of Parkersburg, 268 U. S. 35; Nixon v. Michaels, 38 F. (2d) 420. Cyclopedia of Fed. Proc., Vol. 6, §2689.

All courts, state and national, must take judicial notice of and be governed by a treaty to which the United States is a party as a law of the land. U. S. v. Rauscher, 119 U. S. 407; Munich Reinsurance Co. v. First Reinsurance Co. of Hartford, 6 F. (2d) 742; Daigle v. U. S., 237 Fed. 159; Lacroix Fils v. Sarrazin, 15 Fed. 489. See also, U. S. v. Reid, #7476, decided by this court October 15, 1934. At the time the alleged injuries were sustained by libelant, the Treaty of Commerce and Navigation, 1827, between the United States and the Kingdom of Sweden and Norway was in force and effect. The second paragraph of Article XIII of said treaty is as follows:

"The Consuls, Vice-Consuls, or Commercial Agents, or the persons duly authorized to supply their places, shall

have the right as such to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without interference of the local authorities, unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country; or the said Consuls, Vice-Consuls, or Commercial Agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood, that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country." (8 Stat. 346, 352.)

"In the absence of treaty stipulations, the courts of admiralty of the United States have jurisdiction of all matters appertaining to a foreign ship while in the ports of the United States." Heredia v. Davies, 12 F. (2d) 500, 501, and cases cited. In suits between foreigners it is dis-
[fol. 77] cretionary with the court as to whether or not it will assume jurisdiction. Canada Malting Co., Ltd. v. Paterson Steamships, Ltd., 285 U. S. 413, 421.

Where treaty stipulations exist, however, with regard to the right of the Consul of a foreign country to adjudge controversies arising between the master and the crew, or other matters occurring on the ship exclusively subject to the foreign law, such stipulations are the law of the land and must be fairly and faithfully observed. The Belgenland, 114 U. S. 355, 364, 5 S. Ct. 860; Wildenhus's Case, 120 U. S. 1, 17, 7 S. Ct. 385.

In The Rindjani, Adam v. Griep, 254 Fed. 913, this court considered a similar case involving the treaty stipulations between the United States and the Netherlands. In that case the members of the crew were claiming transportation from San Francisco to Rotterdam based upon their claim that the voyage to San Francisco constituted a clear breach of the contract of shipment which entitled them to discharge at the latter city. After setting out the treaty provisions, this court stated:

"The provisions of article 11 of the convention, above set out, are in effect the same as those of article 10 of the treaty between the United States and the King of Prussia of May 1, 1828 (8 Stat. 382), which was the subject of con-

sideration in The Elwine Kreplin, 9 Blatchf. 438, Fed. Cas. No. 4,426, in which case it was held that that treaty required that the matter then in dispute—a matter of wages in that case—was one for the determination of the consular officer, and that the United States courts had no jurisdiction of it.

"That ruling was followed by Judge Deady in the case of The Marie (D. C.) 49 Fed. 286, in the case of The Burchard (D. C.) 42 Fed. 608, in the Welhaven (D. C.) 55 Fed. 80, and in other cases there cited.

"Our conclusion is that the court below had no jurisdiction over the question as to the right of the libelants to transportation from San Francisco to Rotterdam, * * *".

In The Elwine Kreplin, 9 Blatchf. 438, Fed. Cas. 4426, relied on by this court in The Rindjani, supra, the treaty stipulation between the United States and the King of Prussia was identical in terms with the treaty stipulation now under consideration. In The Marie, 49 Fed. 286, a case involving the same treaty stipulation now under consideration, Judge Deady stated:

"The treaty of 1827 is a law of that kingdom, and by it the consuls of that country are given exclusive jurisdiction [fol. 78] of all 'differences'—controversies—between the captain and crew of a Norwegian vessel. This, in effect, forbids—disables—the libelant from resorting to any other tribunal for the settlement of such 'difference'. The treaty is also a law of the United States, and forbids this court from interfering in a case of a 'difference' between the master and crew of a Norwegian vessel".

The same conclusion was reached in The Welhaven, 55 Fed. 80. See also, The Ester, 190 Fed. 216, 221.

The Burchard, 42 Fed. 608, involved a dispute between the master and a member of the crew of a German vessel and there, too, the court held that it was without jurisdiction of the suit in view of the treaty of December 11, 1871, with the German Empire. The same conclusion was reached in The Cambitsis, 14 F. (2d) 236, where the dispute was between the master and a member of the crew of a Greek vessel. The provisions of the treaties with the German Empire and with Greece, in this connection, were substantially the same as those contained in the treaty of 1827 with Norway.

In The Eir, Persson v. Folsen, 60 F. (2d) 124, cited by appellant, the Circuit Court of Appeals for the Fourth Circuit held in a suit brought by a Swedish seaman against a Norwegian steamship for injuries sustained while working on board as a member of her crew in a United States port that it was an abuse of discretion for the District Court to decline to take jurisdiction. The jurisdiction of the District Court in view of the treaty between the United States and Norway was not challenged and both parties, as well as the court, apparently assumed that it was a matter within the discretion of the District Court.

The authorities we have cited lead us to the conclusion that the District Court was without jurisdiction to entertain the suit and the libel should have been dismissed for that reason rather than as an exercise of discretion.

In view of our conclusion that the District Court lacked jurisdiction of the suit, it becomes unnecessary to consider other points argued in the briefs.

Decree of the District Court dismissing the libel is affirmed, with costs to the appellee.

[File endorsement omitted.]

[fol. 79] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 7192

PETER VAN DER WEYDE, Appellant,

vs.

OCEAN TRANSPORT COMPANY, LTD., a Corporation, Claimant of the Steamship "Taigen Maru," Her Tackle, Apparel, Engines, Boilers and Furniture, and C. Stang Anderson, Appellees.

DECREE—Filed Nov. 19, 1934

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of Record from the District Court of the United States for

the Western District of Washington, Southern Division, and was duly submitted:

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the appellees, and against the appellant.

It is further ordered, adjudged, and decreed by this Court, that the appellees recover against the appellant for their costs herein expended, and have execution therefor.

[File endorsement omitted.]

[fol. 80] Clerk's Certificate of foregoing transcript omitted in printing.

Endorsed on cover: Seamen's Case. File No. 39,348. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 720. Peter Van Der Weyde, Petitioner, vs. Ocean Transport Company, Ltd., a Corporation, Claimant of the Steamship "Taigen Maru," etc., et al. Petition for a writ of certiorari and exhibit thereto. Filed February 19, 1935. File No. 720, O. T., 1934.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 18, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, limited to the question of the application to this controversy of the Treaty of Commerce and Navigation of July 4, 1827, between the United States and the Kingdom of Sweden and Norway.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.